
(2005) 01 PAT CK 0022
In the Patna High Court
Case No : CWJC No. 12291/99

Devki Devi and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Citation : (2005) 2 PLJR 39

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—Original petitioner Ram Bilash Prasad @ Ram Bilash Yadav is dead and this application is being pursued by his legal representative. Expression petitioner in this judgment shall mean the original petitioner. The year 1981 was declared as International year for handicapped and the State Government took a policy decision to appoint handicapped persons in class III posts including post of Assistant Teachers in Primary Schools. In pursuance of the said decision, steps were taken for appointment of handicapped persons and ultimately by notification dated 28th March, 1982 (annexure 3) petitioner was appointed as Assistant Teacher. Later on his service was terminated and aggrieved by the same he filed CWJC No. 8662/91 before this Court. Aforesaid writ application alongwith other writ applications were taken up together and Division Bench of this Court by order dated 28th June, 1995 (Annexure 5) disposed of the writ applications with a direction to the respondents to pass appropriate final order-within a period of four months from the date of receipt of the said order. In pursuance of the aforesaid order the Deputy Director Secondary Education vide its letter dated 12.1.95 wrote to the District Superintendent of Education to get the petitioner examined by a Medical Board and to forward the certificate to him. In pursuance of the said order, petitioner was examined by Medical Board and the Civil Surgeon-cum-Chief Medical Officer, Munger in its memo dated 23.2.96 (annexure 7) certified that petitioner"

disability is to the extent of 55 per cent. It seems that petitioner was again subjected to medical examination in which his disability was found to the extent of more than 40 percent.

2. Complaining non-compliance of the order passed in the writ application petitioner preferred MJC No. 877/98 for initiating a proceeding for contempt against the respondents. In the contempt application respondents placed on record the order dated 22.9.98 directing reappointment of the petitioner. In view of the aforesaid, this Court did not proceed with the contempt application but gave liberty to the petitioner to challenge the same in accordance with law. In view of the liberty given petitioner has preferred this application.

3. Mr. Sanjeev Ranjan, appearing on behalf of the petitioner contends that petitioner was appointed to the post of Assistant Teacher, taking into account his disability from amongst the persons belonging to the handicapped category. Thereafter his service was terminated on the ground that he is not handicap as he did not appear for medical examination when called upon to do. When a challenge was made to the order terminating the service, this Court directed the respondents to pass appropriate final order within a period of four months from the date of receipt of a copy of the order. Respondents took three years to pass final order and instead of reinstating him in service by order dated 22.9.98, he was reappointed. He points out that reappointment of the petitioner has led to serious civil consequences as the petitioner has been deprived of the benefit of service rendered by him prior to termination of the service and has also not been given salary for the period he remained out of employment because of illegal termination of service.

4. JC to SC III, however, contends that this Court had not quashed the order of termination of service and directed for his reinstatement, hence petitioner shall not be entitled for the benefit for the period he remained out of employment on account of termination of service till his reappointment. In support of his submission reliance has been placed on an unreported decision of this Court in CWJC No. 8517/04 (Lallan Rai & Ors. vs. State of Bihar & Ors.) Ed.- 2005(2) PLJR 571. and my attention has been drawn to the following passage from the said judgment.

"The decision of this Court in the case of Gouri Shankar Ram & Ors. (supra) has been rendered on an assumption and concession by the respondents that the case was identical to that of the case of Md. Sahamat & Ors. (supra). As stated earlier, in the case of Md. Sahamat, the order of termination was set aside by this Court and direction for reinstatement was given and further payment of salary was directed in the case the employees had worked for the period in question. Even at the cost of repetition, I may state that it is not the claim of the petitioners that they had worked from 12.10.1987 to 21.2.93, the period for which they are claiming payment of salary. As the petitioners have been regularised in service with effect from 22.2.1993, they shall not be entitled for payment of salary for the period earlier to that in which they have not worked".

5. Having considered the rival submission, I find substance in the submission of Mr. Ranjan and decision relied on by respondents is clearly distinguishable. The service of the petitioner was terminated by order dated 28.10.91. He challenged the same by filing CWJC No. 8662/ 91 and a Division Bench of this Court by order dated 28.6.95 directed to pass appropriate final order within a period of four months. Petitioner was examined by a Medical Board which found his handicap to the extent of 55 per cent and certificate to that effect was given by Civil Surgeon vide its letter dated 23.2.96. The respondent delayed taking action for a long period for which no fault can be fastened on him. As this Court in the earlier writ application had given direction for passing appropriate final order, there was no occasion for it to consider entitlement of the petitioner for the period in between. This Court had occasion to consider this question in CWJC No. 11377/97 and while disposing of the said writ application by order dated 7.8.98, it observed as follows:

"7. In my view, since this Court while quashing the order of termination, had directed the authorities to hold inquiry about validity/legality of appointment, it was not necessary at that stage to issue- such direction. But if the competent authority after holding inquiry found that the petitioner's appointment was valid and genuine, it would not be proper to withhold the payment for the period in question." (underlining mine)

6. The final order passed shows that petitioner's handicap is to the extent of 55 per cent. In that view of the matter it is obvious that petitioner was kept out of employment for no fault on his part. In my opinion petitioner a handicapped person, ought not to have been dealt in the manner the respondents have chosen to do. In the facts of the present case, I am of the opinion that order terminating his service by order dated 28.10.91 is fit to be ignored and the petitioner's heirs entitled for all monetary benefit, as if petitioner's service was never terminated.

7. Accordingly I direct the respondents to pay to heirs of the petitioner, the monetary benefit, ignoring the fact of termination of petitioner's service within a period of six months from the date of receipt/ production of a copy of this order. In the result, this writ application is allowed with the direction aforesaid, but without any order as to cost.